



**MCI Telecommunications
Corporation**
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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MAR 18 1996

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

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March 18, 1996

Mr. William F. Caton
Secretary
Federal communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

**RE: In the Matter of Amendment to the Bell Atlantic Telephone Companies
Tariff FCC No. 10, Video Dialtone Service in Dover Township, New
Jersey, Transmittal Nos. 741, 786, CC Docket, No 95-145**

Dear Mr. Caton:

Enclosed herewith for filing are the original and four (4) copies of MCI Telecommunications Corporation's Comments regarding the above-captioned matter.

Please acknowledge receipt by affixing an appropriate notation on the copy of the MCI Comments furnished for such purpose and remit same to the bearer.

Sincerely,

**Lawrence Fenster
Senior Economist**

Enclosure

10-12-95
FCC/DOJ/DOJ

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of)	
)	
Amendment to The Bell Atlantic)	Transmittal Nos. 741, 786
Telephone Companies)	Amended
Tariff FCC No. 10)	
)	
Video Dialtone Service)	CC Docket No. 95-145

OPPOSITION

I. Introduction

In a letter dated February 16, 1996, the Commission asked Bell Atlantic to comment on "...the effect of the Telecommunications Act of 1996 (1996 Act) on Bell Atlantic's provision of video service in Dover Township and the Commission's investigation of the tariff." ¹ The Commission also asked interested parties to reply to Bell Atlantic's comments"

Bell Atlantic filed its comments on March 1, 1996, and requested the Commission to terminate any further investigation of its Dover Township video dialtone tariffs, contending that the Telecommunications Act of 1996 (1996 Act) invalidates video dialtone regulation *in toto*. Bell Atlantic draws three conclusions from this contention. First, Bell Atlantic contends that its Dover Township video service is no longer a video dialtone service, rather

¹Letter from Geraldine A. Matisse, Chief, Tariff Division, Common Carrier Bureau, FCC to Patricia Koch, Assistant Vice President, Bell Atlantic, dated February 16, 1996.

it is a "...common carrier video transport service, subject to traditional Title II regulation." ²

Second, Bell Atlantic contends the Commission should terminate the tariff investigation of its Dover video service, because "...the issues designated for investigation are based in part on whether the tariff meets the requirements for video dialtone service set out in Commission rules that have been repealed."³ Finally, Bell Atlantic contends that the Commission should terminate its tariff investigation since the regulatory regime that will replace video dialtone (Open Video Systems) will not include tariffing requirements.

II. MCI Opposition

MCI opposes Bell Atlantic's request. In initiating this docket, the Commission concluded that "...Bell Atlantic's tariff does raise questions of lawfulness with respect to its cost allocation methods, rate levels, and various terms and conditions governing its provision of video dialtone service...."⁴ Bell Atlantic's telephone customers may be entitled to a refund if the Commission's concern regarding Bell Atlantic's subsidization of video service with telephone revenues is corroborated.

MCI recommends the Commission continue its tariff investigation with the purpose of resolving cost allocation issues which pertain to the regulation of Title II video services. MCI makes this recommendation for the following reasons: 1) the 1996 Act clearly

²Comments of Bell Atlantic, *In the Matter of Amendment to the Bell Atlantic Telephone Companies Tariff* FCC No. 10, Video Dialtone Service in Dover Township, New Jersey, Transmittal Nos. 741, 786, CC Docket, No 95-145, at 2.

³Bell Atlantic comments, at 2-3.

⁴ *In the Matter of Bell Atlantic Telephone Companies Revisions to Tariff* F.C.C. No. 10, Rates Terms, and Regulations for Video Dialtone Service in Dover Township, New Jersey, Transmittal Nos. 741, 786, CC Docket No. 95-145, ¶4.

requires the Commission to regulate video common carriage services as Title II services; 2) Bell Atlantic's Dover system is currently providing common carrier video services and consequently the Commission must determine that the rates are just and reasonable through standard tariffing procedures, pursuant to Sections 201-205 of the Communications Act of 1934; and 3) the rules and regulations adopted under the regulatory concept known as "video dialtone" were primarily applications of well-established Commission rules governing Title II services to the provision of video services by LECs.

III. The 1996 Act Clearly Requires The Commission To Regulate Video Common Carrier Services As Title II Services

The 1996 Act lets telephone companies choose the means by which they may offer video services to customers in their service areas: a) as a common carrier of video services, with little or no provision of programming, subject to Title II regulation; b) as an open video system, where the telephone company provides its own programming and may be subject to reduced regulation under Title VI if certain non-discriminatory conditions are met; c) as a radio-based system, subject to Title III and the prohibition on buy-outs articulated in Section 652; and d) as a cable system, subject to Title VI regulation.

Until Bell Atlantic's open video system certificate is filed and approved, the 1996 Act specifically requires the Commission to regulate common carriage of video services under its Title II rules and regulations.⁵ Any video dialtone system approved prior to the Act continues in operation as a video dialtone system.⁶

⁵ Telecommunications Act of 1996, P.L. No 104-104, 11-Stat. 56 (1996), Section 302(a), Sec 651(a)(2). Section 652 concerns acquisitions of cable and telephony properties.

⁶Id., at Section 653(b)(3).

Moreover, a telephone company must elect status as an OVS provider.⁷ To qualify as an OVS provider, a carrier must submit information, certifying to the Commission⁸ that it complies with Commission rules and regulations to be adopted under Section 653(b)(1) of the 1996 Act. Significantly, the FCC has not yet issued implementing regulations to define certificate requirements or processes it will use to evaluate a telephone company's certification. Thus, Bell Atlantic cannot at present, and on its own motion, declare the Dover video dialtone system to be an open video system.

IV. Bell Atlantic's Dover System Is Currently Providing Common Carrier Video Service

Bell Atlantic is not correct when it maintains that "...the successor of video dialtone under the Act is known as an 'open video system.'"⁹ Open video systems are only one means by which LECs may provide video services. They may also provide video transport on a common carrier basis, precisely as Bell Atlantic is currently doing in Dover Township. As long as Bell Atlantic continues to offer video service on a common carrier basis, the Commission must positively determine that its rates are just and reasonable through standard tariffing procedures.

That is precisely the issue that the Commission is exploring in CC Docket 95-145. In that docket, the Commission is poised to resolve many serious issues concerning cross

⁷Id., at Section 651(a)(4).

⁸Id., at Section 653(a)(1).

⁹ Comments of Bell Atlantic.

subsidization and improper cost allocation in reference to Bell Atlantic's video dialtone rates in Dover Township.

"We held that although the allocation methodology chosen by Bell Atlantic was not patently unlawful, any technique that relies so heavily on such a small portion of the network to calculate the ratio for allocating all non-incremental shared costs for the entire integrated system, requires investigation."¹⁰

"We held at that time that we could not reject as patently unreasonable Bell Atlantic's contention that certain costs were unidentifiable as incremental to video dialtone or that it would be unreasonable to allocate such costs as incremental to video dialtone.... We stated however, that an investigation of these assertions is warranted."¹¹

"We also stated that although not patently unlawful, an overhead loading factor of 1.2 was low enough to warrant investigation."¹²

"Thus in order to determine if Bell Atlantic's capacity costing is appropriate, we require Bell Atlantic to provide specific information on how it plans to use the remaining 79 channels available after deployment of broadcast and narrowcast services."¹³

None of these concerns have been resolved by the 1996 Act. And, as demonstrated in section III above, the 1996 Act clearly authorizes the Commission to apply existing Title II tariffing procedures and policies to existing video dialtone systems.

V. Video Dialtone Is A Common Carrier Video Service

In its first video dialtone order the Commission stated that "[v]ideo dialtone would be common carrier-based with the addition of competitive non-common carrier services that

10 In the Matter of Bell Atlantic Telephone Companies Revisions to Tariff F.C.C. No. 10, Rates Terms, and Regulations for Video Dialtone Service in Dover Township, New Jersey, Transmittal Nos. 741, 786, CC Docket No. 95-145, ¶23.

11 Id., at ¶29

12 Id. at ¶34.

13 Id., at ¶39.

would provide end users access to video programming and other information sources.”¹⁴

More specifically, the Commission tentatively concluded

...that broadband transmission and switching components, if available, would be functionally indistinguishable from the narrowband transmission and switching components of today’s telephone network and consequently, access to these facilities can reasonably be regulated as a traditional telecommunications common carriage.¹⁵

The Commission had the authority to permit LECs to provide common carrier video services because, under the video dialtone model, the LECs would not directly provide video content.¹⁶

Throughout its consideration of video dialtone issues in CC Docket 87-266, the Commission consistently maintained that its rules and regulations were sufficient to cover all public interest concerns regarding the implementation of video dialtone. Thus, in its second video dialtone order, the Commission affirmed that “...our traditional regulatory regime that distinguishes between basic and enhanced services requires no changes. Traditional Title II obligations will attach to the basic common carrier platform....”¹⁷ In its third video dialtone order, the Commission rejected “...claims that we should amend Part 64 because current rules would not prevent LECs from improperly subsidizing video dialtone

¹⁴ *Further Notice of Proposed Rulemaking, First Report and Order and Second Further Notice of Inquiry in CC Docket No. 87-266*, 7 FCC Rcd 300, 304.

¹⁵ *Id.*, 318.

¹⁶ *Id.* at 312.

¹⁷ *Second Report and Order, Recommendation to Congress, and Second Further Notice of Proposed Rulemaking*, 7 FCC Rcd 5881 ¶16, (1991).

nonregulated services. To the contrary, we conclude that existing Part 64 rules do not require modification to prevent such an outcome."¹⁸

VI. Conclusion

MCI recommends the Commission complete the investigation of Bell Atlantic's tariff for Dover Township. Resolving the issues raised in CC Docket 95-145 is required because the 1996 Act retains video common carriage as one video option available to the LECs. The Commission will be required to have rules and regulations in place to govern this option. Moreover, completing this task will not impose any significant regulatory burden on the Commission or interested parties. Cost allocation issues with respect to common carrier video services must be resolved, for the future generally, but also with respect to the period under investigation, in which Bell Atlantic has been allowed to unlawfully subsidize its video dialtone offering with revenues from telephone services.

Respectfully submitted,
MCI TELECOMMUNICATIONS CORPORATION



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March 18, 1996

¹⁸ *Memorandum Opinion and Order on Reconsideration and Third Further Notice of Proposed Rulemaking*, CC Docket No. 87-266, 10 FCC Rcd 244, 329.

STATEMENT OF VERIFICATION

I have read the foregoing and, to the best of my knowledge, information, and belief, there is good ground to support it, and it is not interposed for delay. I verify under penalty of perjury that the foregoing is true and correct. Executed on March 18, 1996.

A handwritten signature in cursive script, appearing to read "Lawrence Fenster", written over a horizontal line.

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CERTIFICATE OF SERVICE

I, Stan Miller, do hereby certify that copies of the foregoing Comments were sent via first class mail, postage paid, to the following on this 18th day of March, 1996.

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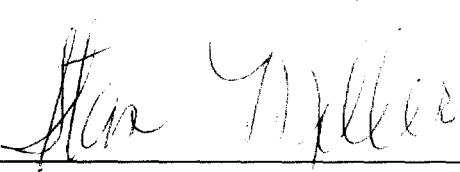
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